

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of PACIFIC GAS AND ELECTRIC COMPANY to Recover Additional Costs Related to the 1997 New Year's Flood and 1998 February Storms Recorded in the Catastrophic Event Memorandum Account (CEMA) Pursuant to Ordering Paragraph 1 of Decision 04-09-020.

Application 05-09-001  
(Filed September 2, 2005)

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**OPINION ON RECOVERY BY PACIFIC GAS AND ELECTRIC COMPANY  
FOR A CATASTROPHIC EVENT MEMORANDUM ACCOUNT RELATED  
TO THE 1997 NEW YEAR'S FLOOD AND 1998 FEBRUARY STORMS**

This opinion allows Pacific Gas and Electric Company (PG&E) to recover the \$15.8 million of uncontested costs recorded in a Catastrophic Event Memorandum Account (CEMA). This proceeding is closed.

**1. Background**

On September 2, 2005, PG&E filed Application (A.) 05-09-001 to recover additional electric transmission and distribution costs for two declared disasters, the 1997 New Year's flood (Flood) and the 1998 February storms (Storms). PG&E recorded these two events in its CEMA in accordance with Pub. Util. Code § 454.9, and Resolution E-3238.<sup>1</sup> Rate recovery for these two events was

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<sup>1</sup> All subsequent code section references are to the California Public Utilities Code.

previously requested in A.99-03-039, PG&E's § 368(e) proceeding filed with the Commission. PG&E was subsequently directed in Decision (D.) 04-09-020 to file this separate application for the Flood and Storms' rate recovery. PG&E states in its application that it excluded most of the costs to repair electric transmission and distribution facilities damaged by these two events from another earlier application (A.99-01-011), which addressed seven separate events, including only portions of the Flood and Storms. (Application, pp. 1-2.) The Commission, in D.00-04-050,<sup>2</sup> adopted a settlement agreement covering these seven events including a portion of the Flood and Storms costs.

## **2. Procedural History**

Notice of the Application appeared in the Commission's daily calendar on September 9, 2005. Resolution ALJ 176-3158, dated September 2005, preliminarily categorized the application as ratesetting and determined that hearings were necessary. The Assigned Commissioner was persuaded that hearings are not necessary and changed the determination in the Scoping Memo issued on November 3, 2005. By D.05-12-027, dated December 15, 2005, the Commission affirmed the Commissioner's ruling.

Because the application and testimony as originally filed and served did not provide sufficient information for the Commission to decide whether the request is both reasonable, and supported by clear and convincing evidence, the assigned Administrative Law Judge (ALJ) ordered PG&E to supplement the application.<sup>3</sup> Specifically, PG&E was required to explain in detail its request to

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<sup>2</sup> 2000 Cal. PUC Lexis 372. Decision dated April 20, 2000.

<sup>3</sup> Ruling dated September 25, 2005.

recover certain direct labor costs as incremental costs. PG&E served supplemental testimony on October 14, 2005.

The Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) attended the prehearing conference on Wednesday, October 26, 2005, and stated they did not intend to serve testimony or request hearings.

PG&E sought leave at the prehearing conference to brief the § 368(e) legal issue that it believes applies to its request to recover direct labor costs.<sup>4</sup> PG&E filed a timely brief; no other party filed or replied. Therefore, PG&E's application is uncontested. The record is composed of all filed and served documents. PG&E also provided prepared testimony dated September 2, 2005, which is hereby identified as Exhibit (Exh.) PG&E-1 and admitted into evidence. The October 14, 2005 supplemental testimony is hereby identified as Exh. PG&E-2 and admitted into evidence.

### **3. Discussion**

The Commission must decide whether PG&E has proven with clear and convincing evidence that the costs it seeks to recover for the Flood and Storms were reasonable and prudent. We use the standard Commission definition of reasonable and prudent where the reasonableness of a management action depends on what the utility knew or should have known when it made a decision.<sup>5</sup>

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<sup>4</sup> Prehearing conference transcript, pp. 4-5.

<sup>5</sup> See for example, D.02-08-064, dated August 22, 2002, *mimeo.*, pp. 5-8.

The 1997 Flood began with rain in the last week of December 1996 and by January 2, 1997 then-Governor Wilson declared states of emergency in 25 counties of Northern California. On January 4, 1997 then-President Clinton declared a federal disaster for 37 counties, and by January 13, 1997 the total number of counties rose to 46. PG&E timely notified the Commission and invoked CEMA on February 2, 1997. In this application PG&E requests \$2.5 million, the outstanding 1997 and 1998 revenue requirement for Flood related activities. PG&E spent \$52 million in capital expenditures and has been recovering the balance of its revenue requirements within rates authorized by subsequent rate proceedings. (Exh. PG&E-1, pp. 1-3.)

The 1998 Storms began in late January and on February 4, 1998, Governor Wilson declared states of emergency in nine counties served by PG&E. President Clinton declared 24 counties served by PG&E as federal disasters on February 9, 1998. By February 28, 1998, the toll rose to 33 counties. PG&E timely notified the Commission and invoked CEMA on March 6, 1998. In this application PG&E requests \$13.3 million, the outstanding 1998 revenue requirement for Storms related activities. PG&E spent \$8.2 million in expenses and \$15.3 million in capital expenditures and has been recovering the balance of its revenue requirements within rates authorized by subsequent rate proceedings. (Id, pp. 1-3 and 1-4.)

PG&E recovered a portion of the Flood and Storms costs in a previous CEMA proceeding, A.99-01-011, filed January 7, 1999, where it included the costs recorded on or before May 31, 1999, from seven declared disasters: (1) the February 1998 Storms, (2) the 1997 New Year's Flood, (3) the March 1995 Storms, (4) the January 1995 Storms, (5) the Northridge Earthquake, (6) the Calaveras and Shasta County Fires, and (7) the Oakland/Berkeley Hills Fire. In D.00-04-050,

dated April 20, 2000, based on a settlement, PG&E recovered \$69.8 million for its CEMA revenue requirement: \$59.3 million in electric revenue requirement and \$10.5 million in gas distribution revenue requirement.<sup>6</sup> The settlement contained a specific Reservation:

(3) certain potential CEMA costs that PG&E excluded from its revenue request in this proceeding because PG&E had included them in PG&E's Public Utilities Code Section 368(e) proceeding (Application 99-03-039). The latter costs are identified in the "Cost Exclusions - AB 1890" rows of Tables 9-1 and 9-2 of Exhibit 1 of this application. PG&E may include these costs in a future CEMA application if the Commission concludes that the revenues requested in the Section 368(e) proceeding should have been included in a CEMA request. (See Settlement Section II Reservation, paragraph (2) part (3), attached to D.00-04-050.) (Emphasis Added.)

As contemplated in the settlement, the Commission did exclude these items from PG&E's application filed pursuant to § 368(e) in D.04-09-020, dated September 2, 2004, which ordered PG&E to file a separate CEMA application<sup>7</sup> for the Flood and Storms.

Pacific Gas and Electric Company (PG&E) shall remove from Pub. Util. Code § 368(e) recovery storm-related capital and expenses of \$29.089 million recorded in 1997 and 1998. PG&E may include this amount in a new Catastrophic Event Memorandum Account application. (Ordering Para. 1, *mimeo.*, p. 40.)

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<sup>6</sup> 2000 Cal. PUC LEXIS 372.

<sup>7</sup> Conclusion of Law 12: "PG&E should seek recovery of \$28.089 million in storm and flood-related costs in an application filed pursuant to § 454.9." *Mimeo.*, p. 39.

In its detailed testimony<sup>8</sup> here, PG&E presents persuasive evidence by four witnesses that the costs to repair the utility system and restore service were prudently incurred and were incremental to all other allowances included in rates at the time of the Flood and Storms. We judge the credibility of the testimony by its content and persuasiveness, not by the number of pages. When PG&E's testimony (Exh. PG&E-1 and PG&E-2) is viewed in conjunction with D.00-04-050, where the parties made detailed examinations and served testimony prior to settling the proceeding, and D.04-09-020, where the Commission found the Flood and Storm costs were correctly allocated to the two catastrophes (*mimeo.*, pp. 32-33), PG&E has shown that it separately tracked the incremental costs of these events in separate specific accounts.<sup>9</sup> Based on the record, we find PG&E's costs to be reasonable for the circumstances surrounding the Flood and Storms. We also find that PG&E should recover the outstanding balance of \$15.8 million, the un-recovered revenue requirement for 1997 and 1998 for the Flood and Storms.<sup>10</sup>

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<sup>8</sup> PG&E served 53 pages of expert testimony (Exh. PG&E-1) and provided hundreds of pages of work papers, which are not introduced into the record, but were available for TURN and ORA when they determined whether or not they would actively participate in the proceeding.

<sup>9</sup> See Exh. PG&E-1, p. 4-2, for a detailed discussion of PG&E's accounting system including the use of "specific orders" to track the Flood and Storms' costs. This testimony continues with an explanation of PG&E's accounting for all project costs and rate recovery from other sources to derive the incremental costs related to the Flood and Storms.

<sup>10</sup> See Exh. PG&E-1 Table, 5-1, pp. 5-6, DiTirro Testimony.

PG&E proposes that the revenue requirement should be recovered in its current Distribution Revenue Adjustment Mechanism (DRAM).<sup>11</sup> (Exh. PG&E-1, p. 5-1.)

#### **4. Comments on Draft Decision**

Pursuant to Rule 77.7(f)(2), we waive the 30-day period for public review and comment because it is an uncontested matter where we grant the relief requested.

#### **5. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Douglas Long is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. PG&E suffered damage to portions of its infrastructure during the Flood and Storms. This damage was significant and the Flood and Storms were properly designated as disasters eligible for CEMA recovery.
2. PG&E complied with the requirements for the CEMA as adopted in Resolution E-3238. Its costs were reasonable and incremental to existing allowances in rates at the time of the disasters.
3. The application is uncontested.

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<sup>11</sup> "The purpose of the DRAM is to record and recover the authorized distribution revenue requirements and certain other distribution-related authorized costs. The DRAM will ensure dollar for dollar recovery of these Commission-authorized distribution amounts. ..." See PG&E's Electric Preliminary Statement, Section CZ - Distribution Revenue Adjustment Mechanism, Item 1, Purpose. Tariff Sheet 22717-E, effective March 25, 2005.

**Conclusions of Law**

1. The disaster declarations issued by the Governor and the President for the Flood and Storms constitute events declared to be a disaster by competent state or federal authorities for purposes of § 454.9.

2. Use of the CEMA for recording and recovering the costs incurred by PG&E to restore utility service to customers, repair, replace or restore damaged facilities, as caused by the Flood and Storms, is appropriate under the statute.

3. PG&E alone bears the burden of proof to show that its costs were reasonable and are eligible for recovery under the CEMA tariff.

4. The Commission's prudent manager standard is the appropriate reasonableness standard to apply to the costs recorded in a CEMA.

5. The Commission is not dependent on an intervenor performing any specific analysis before the Commission may determine the reasonableness of a pending matter.

**O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E) is authorized to recover the remaining \$15.8 million of un-recovered revenue requirement for its Catastrophic Event Memorandum Account (CEMA) costs from two declared disasters, the 1997 New Year's flood and the 1998 February Storms.

2. PG&E shall transfer the balance in the CEMA to its Distribution Revenue Adjustment Mechanism.



3. Application 05-09-001 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.